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Held at Headquarters, New York, on Thursday, 17 November 2016, at 3 p.m.

Chair: Ms. Mejía Vélez ..... (Colombia)

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The meeting was called to order at 3.05 p.m.

Agenda item 68: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/C.3/71/L.27, A/C.3/71/L.28/Rev.1, A/C.3/71/L.35/Rev.1, A/C.3/71/L.36/Rev.1)

Draft resolution A/C.3/71/L.27: Moratorium on the use of the death penalty

1. **The Chair** invited the Committee to continue its discussion subsequent to the adoption of the draft resolution.

2. **Mr. Maope** (Lesotho) said that his delegation had supported the amendment to the draft resolution which re-stated the sovereign right of States to determine their domestic legal systems while observing international law. However, several delegations had disassociated themselves from the amendment contained in document A/C.3/71/L.54, thereby implicitly questioning the good faith of the many supporters of the amendment, and had practically reverted to the original version despite their expressed support of the resolution as amended. His delegation had therefore decided to abstain from the final vote.

3. **Mr. Joshi** (India) said that, as all States had a sovereign right to determine their own legal system, his delegation had voted in favour of the amendment. However, it had voted against the draft resolution as the establishment of a moratorium on executions with a view to abolishing the death penalty was counter to Indian statutory law. The death penalty was exercised extremely rarely in India, and Indian law provided for all requisite procedural safeguards, including the right to a fair hearing by an independent court and the presumption of innocence. There were specific provisions for the suspension of the death penalty in cases of pregnancy, as well as rulings that prohibited the executions of people with mental or physical disabilities. Juvenile offenders could not be sentenced to death under any circumstances.

4. Death sentences must be confirmed by a superior court, and the accused had the right to appeal to a higher court or the supreme court, which had guidelines on clemency and the treatment of death row prisoners. The socioeconomic circumstances of an accused person were among the new mitigating factors considered by courts when commuting death sentences to life imprisonment. The President and the governors of states had the power to grant pardons, respites, reprieves or remissions of punishment, or to suspend or commute sentences of any person found guilty of committing an offence. The Committee should respectfully follow the rules of procedure and avoid creating precedents that could disrupt its meetings.

5. **Mr. Thant Sin** (Myanmar) said that, since his country had begun its democratization process, its legislature had been conducting an internal review of existing laws, which would pave the way to strengthening the country's judicial system. The requirements of the national criminal justice system must be met, while taking international norms and standards into account. The death penalty was prescribed under law for serious crimes, in accordance with the law in force at the time the crime was committed, but it could only be carried out pursuant to a final judgement made by the Supreme Court of the Union. The practice was in line with international standards, including article 6.2 of the International Covenant on Civil and Political Rights. Offenders below the age of 16 at the time a crime was committed could not be sentenced to capital punishment.

6. Although the death penalty could be imposed to deter serious crimes, it had not been carried out since 1988. It was important to consider a deterrent for serious crimes in order to maintain the safety and security of citizens. The Committee should not impose a moratorium on the death penalty, but encourage sovereign States to apply it at their own pace and in accordance with the requirements of their judicial systems. His delegation had therefore abstained from the vote.

7. **Ms. Al-Thani** (Qatar), speaking also on behalf of Kuwait, Oman and Saudi Arabia, said that they had voted against the draft resolution based on the conviction that the issue of the death penalty was first and foremost a criminal justice matter that was linked to the criminal legislation of States. As such, that issue must be considered in the context of the national laws of States and the principle of State sovereignty enshrined the Charter of the United Nations. They had

therefore welcomed the adoption of the amendment to the draft resolution contained in document A/C.3/71/L.54, which had underscored the sovereign right of all States to determine their judicial systems and determine appropriate legal penalties, in line with their obligations under international law.

8. **Mr. Ustinov** (Russian Federation) said that the draft resolution could contribute to setting a higher international standard in guaranteeing the right to life. However, to develop international cooperation on the death penalty, it was important to consider the positions of all parties, including the delegations that did not feel able to vote in favour of the draft resolution. In particular, it was clear that the draft resolution had gradually shifted from its original aim of establishing a moratorium. It relied too heavily on documents published by the Office of the United Nations High Commissioner for Human Rights which had been criticized by States when they were adopted. There were no grounds to suggest that legal procedures in consular assistance should not be mentioned as, under the Vienna Convention on Consular Relations, consular institutions must act in accordance with the laws of the host State when interacting with their citizens. The inclusion in the draft resolution of an expanded list of information to be made public by States was unjustifiable and could, in certain cases, clash with the norms of international law. Such considerations had prevented his delegation from sponsoring the draft resolution, although it had voted in favour of it.

9. **Mr. Mohamed** (Sudan) said that his delegation had voted in support of the amendment to the draft resolution but had felt compelled to vote against the draft resolution itself, which had aimed to compel States to accept certain concepts that did not enjoy international consensus. Such concepts should not form the basis of any resolution adopted by the General Assembly, and all States must respect the choices made, and the criminal justice systems adopted by other nations.

10. Pursuant to the International Covenant on Civil and Political Rights, States parties were entitled, under certain prescribed conditions, to impose the death penalty for the most serious crimes, in accordance with the law in force at the time of the commission of the crime. No death sentences were handed down in Sudan except in circumstances prescribed under the Convention and, like many States, his country also prohibited the execution of all persons over 70 years of age. His delegation had full confidence in Sudan's legal safeguards and its stringent terms for the imposition of the death penalty, which served as a deterrent and thereby helped to reduce levels of crime in the country.

11. **Mr. Hassani Nejad Pirkouhi** (Islamic Republic of Iran) said that his delegation welcomed the amendment, and took positive note of the attention that the sponsors had paid to the importance of national dialogue on the death penalty. However, there was neither any commitment under international law on the subject of the draft resolution, nor any agreed definition of the most serious crimes. Governments should decide within their national legal frameworks and international commitments on the best deterrent and punitive measures that would ensure the safety and well-being of their citizens. His delegation had therefore voted against the draft resolution.

12. **Ms. Amadeo** (United States of America) said that the ultimate decision to abolish or establish a moratorium on the continued use of the death penalty must be addressed through the domestic democratic processes of individual Member States, and be consistent with their obligations under international law, including the International Covenant on Civil and Political Rights. In the United States, various protections, inter alia the prohibition of methods of execution that would constitute cruel and unusual punishment, were guaranteed under the Constitution and in criminal statutes at the federal and state levels. In recent years, the Supreme Court had further narrowed both the category of individuals on whom the death penalty could be imposed and the types of offences that could be subject to the death penalty.

13. All States, particularly the supporters of the draft resolution, should focus on addressing and preventing human rights violations that could result from the improper imposition and application of capital punishment. Member States should ensure that they could not apply capital punishment in an extrajudicial, summary or arbitrary manner. Capital defendants must be given a fair trial before a competent, independent, and impartial tribunal established by law, with full fair trial guarantees. Moreover, through their legal

processes, States should carefully evaluate both the category of defendants subject to the death penalty, as well as the crimes for which it could be imposed, in order to ensure that the use of capital punishment complied with their international obligations. Methods of execution designed to inflict undue pain or suffering must be strictly prohibited.

14. **Mr. Haque** (Bangladesh) said that use of the death penalty in Bangladesh was restricted to very select cases of the most serious crimes. An elaborate and transparent process was observed before it could be carried out, and extreme caution was exercised at all stages to avoid any miscarriage of justice. Following all legal and judicial procedures, the person sentenced to the death penalty had the option of seeking presidential clemency. As there was no international consensus on use of the death penalty, and States had the sovereign right to decide to retain or abolish it, his delegation had supported the amendment, but voted against the draft resolution.

15. **Mr. Rabi** (Morocco) said that there had been a de facto moratorium on the death penalty in Morocco since 1993. Fruitful dialogue had been undertaken on maintaining the death penalty in the legal system, and several provisions in the resolution had already been taken into account by the authorities. The right to life was enshrined in the 2011 Constitution, which emphasized that the right to life was the primary right of all people. Morocco had adopted a transparent policy on capital punishment and regularly contributed statistics to relevant bodies. Legislators had established the necessary safeguards for guaranteeing the total respect for the rights of the accused person during the application of capital punishment, including pardons and exemptions for people with mental disabilities. Children and pregnant women could not be sentenced to death, and some persons could receive a royal pardon or commutation of their death sentence. The King had commuted several sentences, which had been changed to life imprisonment. Morocco had accepted six recommendations from its universal periodic review regarding the establishment of a moratorium on the death penalty and a national discussion of the issue. Due to the diverging opinions in Moroccan society on the death penalty, consultations on capital punishment had been organized by the National Council on Human Rights, the Ministry of Justice and civil society actors. For those reasons, his delegation had abstained from voting.

16. **Mr. Al-Kumaim** (Yemen) said that all States enjoyed a sovereign right to determine their own political, economic, cultural and legal systems. Indeed, the Charter of the United Nations enshrined the principles of equality, justice, and respect for the independence and sovereignty of States, and it was therefore imperative that Member States and all other relevant stakeholders fully respected the choices made by countries, including with regard to the abolition of the death penalty, and upheld the principle of non-interference in the internal affairs of States.

17. No consensus had been reached on the abolition of the death penalty or a moratorium on its use. However, the International Covenant on Civil and Political Rights stated explicitly that States parties were entitled, under certain prescribed conditions, to impose the death penalty for the most serious crimes, in accordance with the law in force at the time of the commission of the crime.

18. While certain States had chosen to abolish the death penalty, others, including his country, had chosen to retain it. In line with its principled position, Yemen, which had not signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, had been compelled to vote against the draft resolution.

19. **Mr. Saito** (Japan) said that his delegation had voted against the draft resolution, as each Member State had the right to decide whether it retained the death penalty or imposed a moratorium. Such decisions should be made through careful consideration of public opinion, trends in serious crime and the need for a holistic balance in the criminal justice policies of Member States. In Japan, the death penalty was applied only to the most serious crimes and could not be imposed on persons under age 18 at the time they committed an offence. The death penalty was suspended in cases of pregnancy or serious mental illness. The Government made relevant data publicly available, such as the number of people sentenced to death but not executed, and the number of executions that had taken place.

20. **Mr. Moussa** (Egypt) said that the resolution lacked balance and the changes necessary to reflect the

views of Member States. However, the amendment was welcome as it reaffirmed the sovereign right of States to retain the death penalty in their penal codes, as many did in line with the International Covenant on Civil and Political Rights. No country should seek to impose its views on the death penalty on other States. His delegation had voted against the resolution, but countries with the death penalty must ensure that it was applied only for the most serious crimes, with a final judgement rendered by a competent court and in accordance with due process. International efforts should focus on strengthening commitments to ensure that no one was arbitrarily deprived of life.

21. **Ms. Popovici** (Republic of Moldova) said that her delegation had sponsored the draft resolution and voted in favour of it. However, as the amendment did not serve the spirit and purpose of the resolution, her delegation disassociated itself from the amended paragraph.

22. **Ms. Vangansuren** (Mongolia), speaking on behalf of the facilitators, said that the draft resolution sent a clear signal that many States were committed to refraining from using the death penalty. The draft resolution encouraged vital discussion on the possibility of moving away from the death penalty at the national and regional levels. It was vital to continue to address the issue and build on the progress that had been made in consigning the death penalty to the past.

23. **Mr. Nguyen** Duy Thanh (Viet Nam) said that the sovereign right of States to choose their own legal and judicial system should be respected. The death penalty could, depending on the circumstances, be considered a necessary measure to deter and prevent particularly serious crimes. His delegation therefore welcomed the inclusion of the amendment proposed by Singapore. Capital punishment in Viet Nam was restricted to the most serious crimes and only carried out in accordance with national and international laws. As part of ongoing legal reforms, the number of crimes subject to the death penalty had been reduced from 44 in 1995 to 15 in 2015, and the use of the death penalty for pregnant women, nursing mothers, juveniles and those over 75 had been suspended.

Draft resolution A/C.3/71/L.28/Rev.1: Human rights in the administration of justice

24. **The Chair** said that the draft resolution contained no programme budget implications.

25. **Mr. Mahidi** (Austria) introduced the draft resolution.

26. **Mr. Khane** (Secretary of the Committee) said that Albania, Andorra, Argentina, Australia, Canada, Djibouti, the Dominican Republic, El Salvador, France, Guatemala, Honduras, India, Israel, Italy, Lebanon, Liberia, Mexico, Monaco, Morocco, New Zealand, the Philippines, Romania, San Marino, Serbia and Thailand had joined the list of sponsors.

27. *Draft resolution A/C.3/71/L.28/Rev.1 was adopted.*

28. **Ms. Brooke** (United States of America) said that the United States of America was pleased to join the consensus on the draft resolution but had been unable to sponsor it because it called upon States to apply principles and standards that were not binding obligations of the United States or were inconsistent with its legislation. The resolution urged States, for example, to ensure that life imprisonment without the possibility of release was not imposed on individuals under the age of 18 and that pretrial detention of children was avoided wherever possible and used only as a measure of last resort and for the shortest appropriate period of time. It also emphasized the importance of the interests of the child when deciding on sentencing of a parent or primary caregiver. Those provisions were neither obligations imposed by customary international law nor ones that the United States had assumed by treaty. The United States therefore interpreted them as urging the implementation of treaty-based obligations to the extent that States had accepted them.

29. The United States similarly interpreted the provision on the international obligation of States not to deprive any person of his or her liberty unlawfully or arbitrarily to be a recommendation rather than a reflection of international principles or obligations since it referred to the "principles of necessity and proportionality", which were neither universally recognized nor reflective of international law and were not necessarily relevant to a determination of lawfulness or arbitrariness within the domestic legal frameworks of States.

30. Finally, the assertion that States should consider establishing an independent mechanism to monitor places of detention was inconsistent with United States policy and practice. The United States considered any monitoring body that was independent of the prison administration, whether governmental or non-governmental, as fulfilling the provisions of the Mandela Rules on the external and independent monitoring of prisons.

Draft resolution A/C.3/71/L.35/Rev.1: Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief

31. **The Chair** said that the draft resolution contained no programme budget implications.

32. **Mr. Moussa** (Egypt), introducing the draft resolution on behalf of the States Members of the United Nations that were members of the Organization of Islamic Cooperation (OIC), said that Australia, Canada, Cuba, Ghana, Japan, New Zealand, Swaziland, Thailand and Venezuela (Bolivarian Republic of) had joined the sponsors.

33. **Mr. Khane** (Secretary of the Committee) said that, in addition, Bolivia (Plurinational State of), China, the Congo, Guinea and Liberia had joined the sponsors of the draft resolution.

34. **Mr. Ružička** (Slovakia), speaking on behalf of the European Union, said that the European Union was committed to maintaining an active dialogue to overcome misinterpretations regarding the important issues of freedom of expression and freedom of conscience, religion or belief. The European Union strongly condemned intolerance, discrimination and violence on the basis of religion or belief, as well as advocacy of religious hatred that constituted incitement to such discrimination, hostility or violence.

35. Freedom of opinion and expression were intrinsically linked to freedom of religion and belief, as well as to other rights, and any restrictions on freedom of expression must be imposed with sensitivity and in accordance with article 19, paragraph 3, of the International Covenant on Civil and Political Rights, not as a pretext for arbitrary discrimination or limitations on fundamental rights or freedoms.

36. Dialogue could play a key role in countering religious hatred, and the European Union welcomed the reference in the draft resolution to open public debate and to interreligious, interfaith and intercultural dialogue as among the best protections against religious intolerance. Religious hatred was primarily a threat to rights and freedoms at the local and national levels; it was States and local authorities who were primarily responsible for countering intolerance. Cultural diversity or religious tradition could not be invoked to infringe upon the human rights guaranteed under international law. It was in that understanding that the member States of the European Union joined the consensus.

37. *Draft resolution A/C.3/71/L.35/Rev.1 was adopted.*

Draft resolution A/C.3/71/L.36/Rev.1: Freedom of religion or belief

38. **The Chair** said that the draft resolution contained no programme budget implications.

39. **Mr. Ružička** (Slovakia), introducing the draft resolution on behalf of the European Union and the other sponsors, said that defending freedom of religion or belief as a universal human right and combating intolerance and discrimination based on religion or belief were essential priorities of the European Union's human rights policy. The promotion of religious tolerance, respect for diversity and mutual understanding were of the utmost importance in creating an environment conducive to the full enjoyment of freedom of religion or belief. The European Union's Guidelines on the promotion and protection of freedom of religion or belief sent a clear signal on the importance given to that human right everywhere and for everyone.

40. The draft resolution was a follow-up action to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The European Union urged all States to step up efforts in that regard, including by implementing universal periodic review recommendations related to freedom of religion or belief. The adoption of the draft resolution by consensus would send a strong collective message to the world on the importance of protecting that freedom.

41. **Mr. Khane** (Secretary of the Committee) said that Argentina, Australia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Georgia, Ghana, Guatemala, Guinea, Iceland, Israel, Lesotho, Lichtenstein, New Zealand, Nigeria, Palau, Panama, Peru, the Philippines, the Republic of Korea, Swaziland, Switzerland, Thailand, Tunisia, Turkey, Uganda, Ukraine, the United States of America and Uruguay had joined the sponsors.

42. **Ms. Bardaoui** (Tunisia) said that her delegation wished to withdraw its sponsorship of the draft resolution.

43. *Draft resolution A/C.3/71/L.36/Rev.1 was adopted.*

The meeting rose at 4.10 p.m.